

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

**FILED BY CLERK**

**SEP 24 2008**

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

JUNIES A. JENKINS,

Plaintiff/Appellant,

v.

STATE OF ARIZONA; BARBARA  
ULIBARI; FRANCES OWENS; DORA  
B. SCHRIRO; and DARYL JOHNSON,

Defendants/Appellees.

2 CA-CV 2008-0099

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil

Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV200702553

Honorable Kevin D. White, Judge

DISMISSED

Junies A. Jenkins

Florence  
In Propria Persona

E S P I N O S A, Judge.

¶1 Plaintiff/appellant Junies Jenkins appeals from the trial court’s orders denying his motions to reconsider the denial of his applications for entry of default judgment against defendants Daryl Johnson, Dora Schriro, Barbara Ulibari, and Frances Owens. For the reasons below, we dismiss the appeal for lack of jurisdiction.

### **Factual and Procedural Background**

¶2 Jenkins is an inmate at the Arizona State Prison in Florence. In November 2007, he filed a complaint against the State of Arizona and the Department of Corrections (DOC), as well as DOC employees Johnson, Schriro, Ulibari, and Owens. The complaint alleged the defendants had violated Jenkins’s constitutional rights by denying him access to legal materials and by instituting retaliatory disciplinary proceedings against him. In December 2007, Jenkins attempted to provide Johnson, Schriro, Ulibari, and Owens with notice of his lawsuit and a request for waiver of service of process.

¶3 In February 2008, Jenkins filed applications in the trial court for entry of default judgment against the four individual defendants. He provided the court with affidavits stating that none of the four had signed and returned the requested waiver of service. The trial court denied Jenkins’s applications on the ground he had provided “no proof of proper service on any of these Defendants.” In March, Jenkins filed a motion for reconsideration, which the court also denied.<sup>1</sup> In May, he re-filed the motion for

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<sup>1</sup>Contrary to Jenkins’s assertion in his motions for reconsideration, a plaintiff is not relieved of the duty to effect service of process merely because the defendant has not signed and returned the plaintiff’s request for waiver of service. *See* Ariz. R. Civ. P. 4.1(c)(2).

reconsideration, which the court again denied. The court found “no ruling on plaintiff’s Petition for Reconsideration dated May 12, 2008, is necessary. The issue was ruled upon by minute entry dated April 1, 2008.” This appeal followed.

### **Discussion**

¶4 Jenkins appeals from the trial court’s orders denying his motions for reconsideration. Under Rule 13(a)(3), Ariz. R. Civ. App. P., he was required to include in his appellate brief a statement giving “the basis of the appellate court’s jurisdiction.” He has failed to do so. This court, however, has an independent duty to determine whether we have jurisdiction over the appeal. *See Ruesga v. Kindred Nursing Ctrs, L.L.C.*, 215 Ariz. 589, ¶ 8, 161 P.3d 1253, 1257 (App. 2007).

¶5 This court’s jurisdiction is limited by statute. *See Hall Family Props, Ltd. v. Gosnell Dev. Corp.*, 185 Ariz. 382, 386, 916 P.2d 1098, 1102 (App. 1995). “If no statute makes an order appealable, there is no jurisdiction to consider the merits of an appeal from that order.” *Id.* Section 12-2101, A.R.S., lists the instances when “[a]n appeal may be taken to the court of appeals from the superior court.” Normally, an aggrieved party may only appeal from an order of the superior court upon the entry of a “final judgment.” § 12-2101(B); *see also Harris v. Cochise Health Sys.*, 215 Ariz. 344, ¶ 8, 160 P.3d 223, 226 (App. 2007). The orders from which Jenkins appeals are not “final judgments,” nor do they qualify as any other appealable order listed in § 12-2101. We recognize the denial of a motion for reconsideration can in certain instances be appealable because it is a special order

following a final judgment. *See* A.R.S. § 12-201(C). However, the court’s denial of Jenkins’s applications for entry of default judgment—the ruling he moved the court to reconsider—does not constitute a final judgment. Consequently, § 12-2101(C) does not apply. This court, therefore, has no jurisdiction to consider the appeal.<sup>2</sup> *See Hall Family Properties*, 185 Ariz. at 386, 916 P.2d at 1102.

### **Disposition**

¶6 Because this court lacks jurisdiction, the appeal is dismissed.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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GARYE L. VÁSQUEZ, Judge

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<sup>2</sup>We note that Jenkins’s opening brief is entitled a “petition for review.” A petition for review, however, is the procedure by which our supreme court reviews the decisions of this court. *See* Ariz. R. Civ. App. P. 23. The title of his brief also indicates he seeks a “writ of coram nobis.” Although this court may issue “writs and orders necessary and proper to the complete exercise of its appellate jurisdiction,” A.R.S. § 12-120.21(A)(3), we do not have appellate jurisdiction over this matter, as explained above.